Remarks

This paper is filed in response to the office action dated October 28, 20008. After amendment, claims 1-4, 7-8, 13, 15, 18, 20 and 35-47 remain pending in the present application. By way of this amendment, duplicative claim 22 was renumbered claim 23 and cancelled. Claims 24-34 (renumbered) were also canceled. Previously pending misnumbered claims 34-46 have been renumbered claims 35-47. The presently pending claims are directed to subject matter which is consistent with Applicants' election to prosecute the invention of group I and the elected species. The cancelled claims and related subject matter are cancelled *without prejudice* in response to the Examiner's restriction requirement and Applicants' election. Claims 35-45 and 47, are directed to pharmaceutical compositions comprising the compounds of claims 1-3, 7-8, 13, 15, 18, 20 and 46. Support for the amendment to claims can be found throughout the originally filed application and claims. A minor amendment to the claims has been made to distinguish the present invention over the newly cited prior art. No new matter has been added by way of the present amendment.

The Examiner has variously rejected the previously pending claims under 35 U.S.C. §§102 and 103 over the disclosure of Nishikawa, et al., JP 07082225 ("Nishikawa"). Applicants shall address each of these rejections in the sections which follow.

The 35 U.S.C. §102(b) Rejection

The Examiner rejected originally filed claim 1 as being anticipated by Nishikawa. In particular, the Examiner contends that Nishikawa discloses the compound which appears in the October 2008 office action on the to of page 4. Inasmuch as claim 1 has been amended to claim compounds wherein R^2 does not contain a carboxylic acid group and R' are obtained from amino acids which do not include aspartic acid or glutamic acid, the compounds which are claimed are not anticipated by Nishikawa, which requires at least one side chain which is an aspartic acid side chain.

It is respectfully submitted that the amended claims are not anticipated by the art of record and are in compliance with the requirements of 35 U.S.C.

The 35 U.S.C. §103(a) Rejection

The Examiner has also rejected the previously pending claims as being obvious over the teachings of Nishikawa for the reasons which are stated in the office action on pages 4-5. The Examiner raises this rejection with respect to the specific compound which is set forth on page 5 of the office action which compound is a para-substituted dibenzoic acid derivative which has been substituted with an aspartic acid residue (linked through the nitrogen of the aspartic acid to the carboxylic acids groups of dibenzoic acid group thus forming an amide group. The compounds which are disclosed in Nishikawa are said to be fibronectin analogs which are active against cancer metastasis by virtue of inhibiting recognition associated with cancer metastasis.

The genus of inhibitors which are disclosed in Nishikawa are represented by the chemical structure which is set forth in the 4-10th lines bridging columns 1 and 2 of page 2 of Nishikawa. Each of those inhibitors contains a methylene carboxylic acid group which evidences that the side-chain of aspartic acid is a critical feature of the disclosed compounds. In addition, reviewing the English-translated application, one finds that the methylene carboxylic acid aspartic acid sidechain is a critical feature of the genus of the compounds disclosed by Nishikawa and this is evidenced in virtually every compound which is disclosed by Nishikawa, especially including . Nishikawa also discloses a number of linkers (which may be absent) which link the aspartic acid residues on each side of the molecule. One of the linkers, described by Nishikawa as being less preferred is an unsubstituted benzene group, which the compound genus description also sets forth as being preferred. When a benzene linker is disclosed, it is disclosed with respect to the specific compound which is set forth on page 5 of the October 28, 2009 office action. In other instances where a benzene linker is disclosed, the compound is a tri-meta substituted benzene compound as depicted on page 4, columns 5-6 of Nishikawa, alternatively, on page 4 of the English translation of Nishikawa. Inasmuch as the present invention is directed to a para-substituted benzene compound and can not possibly claim the substituents on the tri-meta substituted compounds disclosed in Nishikawa, the present invention is neither disclosed nor suggested by Nishikawa.

Moreover, the teachings of Nishikawa, which are, in any event, directed to compound inhibitors which function in a totally distinguishable manner from the present invention, are completely unhelpful in producing the presently claimed compounds. The present compounds are directed to modulation of Bcl-2 protein, having apoptotic/anti-apoptotic activity. The

present invention has claims compounds and is directed to compounds which emerge from a structure activity relationship associated with Bcl-2 protein activity, and not from the fibronectin/vibronectin (metastatic) binding inhibition of the compounds which are disclosed in Nishikawa. Given the teachings of Nishikawa regarding the necessary (required) side chains and other groups on the molecule, the diversity of linker groups (including the absence of any linker group), the description of the dibenzoic acid linker as being clearly *less preferred* in the Nishikawa compounds, the restrictive nature of the generic chemical structures and the clearly distinguishable target of Nishikawa viv-a-vis the inventors, it is respectfully submitted that Nishikawa does not disclose or even remotely suggest the present compounds. There is a disparity of teaching in Nishikawa which in no way can be take to credibly suggest the present compounds. The structure activity relationship of Nishikawa is inapposite to the presently claimed compounds given the distinction in target and Nishikawa's teachings cannot possibly be taken to suggest any of the chemical structures presently claimed given the rigidity of the structure activity relationship set out in Nishikawa and the teaching that the benzene linker is clearly less preferred. Consequently, it is respectfully submitted that the instantly claimed invention is non-obvious and patentable over the teachings of Nishikawa.

For the above reasons, Applicants respectfully assert that the presently claimed invention is patentable and meets the requirements of 35 U.S.C. Applicants respectfully submit that the present application is now in condition for allowance and such action is earnestly solicited.

Applicants have neither cancelled nor added any claim. No fee is therefore due for the presentation of this amendment. A petition for a two month extension of time is included as is a notice of appeal and a check for the appropriate fee.

If any additional fee is due or any overpayment has been made, please charge/credit Deposit Account No. 04-0838.

Respectfully submitted,
Coleman Sudol Sapone, P.C.

By: _____
Henry D. Coleman
Regis. No. 32,559
714 Colorado Avenue
Bridgeport, Connecticut 06605-1601
(203) 366-3560

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: "United States Patent and Trademark Office P.O. Box 1450 Alexandria, Virginia 22313-1450" on March 27, 2009.

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Henry D. Coleman